

I Payment

pay when we get it - 100% following installation.

Late payment no more than $1\frac{1}{2}\%$

II - Taxes

we're not paying any taxes including personal property taxes after shipment

III Limitation of Liability

A.) They need to be liable for loss of our data or programming

EQUIPMENT AND SYSTEMS SOFTWARE p.5

VII - Warranties -

They must warrant that it will work as intended

SUPPORT SERVICES

IIA - Why should we (if we are a "Contracted Customer") pay extra for a periodic release (upgrade)

Support SERVICES - p 10

II A - Why won't they support everything they sell us? and why do we have to pay extra for periodic releases?

C (p 11) -

What is the "escalation plan" for repairs that take "beyond a reasonable time"?

III Automatic renewal

- eliminate - or at least make note of 90 day notice requirement.

IV Price Changes -

their ability to charge "any price" is not reasonable _____

We ought to have the option to terminate if they increase the prices.

IX - Service warranty - p 12

they ought to warrant that they will fix the problems.

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January 28, 2002

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Bartholomew County Information Srvs.
Bartholomew County Governmental Bldg.
440 Third Street
Columbus, IN 47201

In re: Franklin Information Systems and Manatron

Dear Scott:

I have had an opportunity to review proposed agreements with Franklin Information Systems and Manatron. I have comments with respect to each. With respect to the Franklin Information Systems Maintenance and Support Agreement for Building and Zoning Software, I would have the following questions or comments:

With respect to the first page of the agreement under II dealing with Maintenance, I would agree with your comment that a reasonable time should be better defined. Next on the second page under two (2) Support: it would seem to me that if we are going to purchase a maintenance agreement (as we generally always do) then we should not have to pay extra for certain of those services, most specifically, the hot line telephone service.

Under III Warranty and Limitation of Liability still on page two (2), I would like to see stricken from that limitation the implied warranties of merchantability and fitness for a particular purpose. It seems to me that they ought to warrant that the product will perform consistent with its specifications and what they have represented to us that it will do.

On the third page, the paragraph at the top of that page which ends in the sentence: It is agreed that customer will pay Franklin Information Systems all costs and expenses including reasonable attorneys fees incurred by Franklin Information Systems in exercising any of its rights or remedies, I would recommend that we add to the end of that sentence: "and that Franklin Information Systems will pay customer all costs and expenses including reasonable attorneys fees incurred by customer in exercising any of its rights or remedies hereunder." Under IV General, I would suggest adding a new second paragraph which reads: "Franklin Information Systems may not assign any of its obligations, rights or remedies under this scheduled without the prior written consent of customer, which consent may not be unreasonably withheld". Assuming that this is added, then paragraph #2 would become paragraph #3 and paragraph #3 would become paragraph #4.

With respect to the Standard Software License Agreement between Bartholomew County and Franklin Information Systems, I would suggest that on the third page under numbered paragraph seven (7) dealing with warranty, that a new paragraph C be added as follows: In the event that Licensors is unable to correct the variance between software performance and software specifications and/or if the replacement software media fails to perform in conformance with the specifications, Licensors shall refund to Licensee all fees paid by Licensee for said non-performing software.

On page four (4), I would suggest that paragraph thirteen (13) either be eliminated altogether since as a governmental entity we don't pay taxes, or that they rewrite that paragraph acknowledging our tax exempt status as a governmental entity.

Under paragraph sixteen (16) dealing with general provisions, I would suggest that a new subparagraph B be added as follows: Licensors may not assign any of its rights, obligations or remedies hereunder without the prior written consent of licensee, which consent may not be unreasonably withheld. Assuming that this is added, the former paragraph (b) would become paragraph (c) and the former paragraph (c) would become paragraph (d). With respect to paragraph (c), I would require that the agreement be construed consistent with the laws of the State of Indiana, not the State of Ohio. With respect to the Escrow Statement, my only suggestion would be that the agreement be construed consistent with the laws of the State of Indiana instead of Ohio.

With respect to the Manatron Agreement, I have several comments:

The first comment has to do with paragraph 1 under General Terms and Conditions, that being the paragraph dealing with Payment. My preference would be that we agree to pay 100% of the purchase price following installation provided that the product performs properly.

With respect to your provision dealing with late payment, I would suggest that the sentence of that paragraph be reworded as follows: Customer agrees to pay Company within thirty (30) days of receipt of an invoice. Customer agrees to pay a late payment charge at the rate of one percent (1%) per month. And that eliminate the provision or at the maximum late payment charge permitted by applicable law, whichever is greater. Then the phrase "on any unpaid amount for each calendar month, or fraction thereof, that such payment is unpaid may remain.

Under General Terms and Conditions, Section III, Limitation of Liability under the provision dealing with Company shall not be liable for any:, we need to include a provision that makes them liable for the loss of our data or our programming, or any other component that you believe they ought to be held liable for.

On page 5, VII, dealing with Warranty, I would like to have eliminated from the bold type paragraph the exclusion of warranties, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. In this regard, it seems to me that they must warrant that the product will work according to their specifications and as they advertise it.

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Scott Mayes
January 28, 2002

On page 9 under the general heading Support Services, under II, Scope of Services, I have a question as to why we should, if we are a "contracted customer", pay for a periodic release or upgrade. It seems to me that that should be included in what we are paying for on the front end.

Further under Support Services under II, why is it that Manatron won't support everything that they sell us? Additionally, once again it makes reference to us paying extra for periodic releases and my question is why we have to pay for periodic releases.

On page eleven (11) under sub-paragraph (c), it makes reference to an "escalation plan" for repairs that take beyond a reasonable time. It would seem to me that that either needs to be eliminated altogether or needs to be made more definite in terms of what a reasonable time is and also what the "escalation plan" is.

Under paragraph III, there is a provision for automatic renewal of this agreement. As a general matter, I do not like automatic renewal provisions and would suggest that that be eliminated.

Under V on page 12 dealing with Price Changes, it seems to me that their stated ability to charge "any price" is not reasonable and should be eliminated or changed. If that's not possible, then we ought to include a provision which gives us the option to terminate the contract if they increase prices.


Under IX Service Warranty, it seems to me that they ought to warrant that they will fix the problems.

The remainder of that contract seemed to deal with more of the technical end of things which I will defer to your expertise on.

If you have any questions concerning any of this, please feel free to contact me. Thank you very much.

Very truly yours,

JONES PATTERSON & TUCKER


J. Grant Tucker

JGT/caa